IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1469 OF 2006

Santosh Somnath Kamble. ...Applicant
V/s.
The State of Maharashtra. ...Respondent

Ms.Usha Purohit for Applicant.
Ms.S.D. Shinde, APP for the State.

CORAM : V.M. KANADE, J.

DATED : APRIL 18, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

. This is a second application for bail filed by the applicant who was arrested in connection with an offence punishable under Sections 302, 364, 365, 201, 34 of the IPC vide C.R.No.277/2005. This Court by order dated 30th January, 2006 was pleased to reject the application for bail filed by the present applicant.

2. Learned Counsel appearing on behalf of the applicant has submitted that the only evidence against the present applicant is in the form of the statement of

one witness who has alleged that he had last seen the applicant in the company of the deceased. It is further submitted that one more witness viz. Ismail Mohiddin has identified the deceased as the person who was found in the company of three other persons on that particular night. It is submitted that though this witness has identified the deceased on the basis of the photograph which was shown to him by the police, no identification parade has been held for the purpose of identifying the accused by this witness and therefore, there was clearly a lapse on the part of the Investigating Agency. It is further submitted that though the clothes of the applicant were recovered from the house, no blood was found on the clothes. It is further submitted that Babankumar Pande in his statement has merely stated that one Mangesh Shinde and the deceased had consumed alcohol and they left the place. It is submitted that therefore, reliance which is placed by this Court in its earlier order on the statement of Babankumar Pande and Ismail Mohiddin is incorrect as they are not the people who had identified the accused as the person who was last seen in the company of the deceased. Learned

Counsel further invited my attention to the affidavit of one Deepali Shahaji Wadhane who had filed the complaint under Section 376(g) of the IPC against some persons and in her affidavit, she has stated that in her complaint she had not named the present applicant in the FIR. She has further stated that the present applicant was not present at the scene of the offence on the said date and that she has no complaint or grievance against the present applicant.

3. I have heard learned Counsel appearing on behalf of the applicant at length. I have perused the statement of the complainant Rahul Dashrath Mali and the other witnesses which are annexed to the present application. I have also perused the earlier order which is passed by this Court on 30th January, 2006.

4. In my view, no case is made out for grant of bail.

5. The statement of the complainant Rahul Dashrath Mali reveals that he was informed by Mangesh Shinde that

the applicant and his father were last seen together while they were having liquor and at that time, there was an altercation between the two and the applicant had questioned him why the deceased had implicated the present applicant in a case of rape. Thereafter, he had stated that he was informed that the present applicant, deceased and others went away on a motorcycle and the dead body of the deceased was found by the side of the road. Initially, a missing report was filed by the son of the deceased. According to the prosecution, the motive for the commission of the said crime was to take revenge against the deceased since he had taken the name of the applicant and the other accused in a case of gang rape which was filed by one Mangal Wadhane. The motive for the commission of the said offence, therefore, clearly indicates that the accused wanted to eliminate the deceased since he had given a statement against them. It is true that the witness Ismail Mohiddin has identified the deceased as the person who was there in the company of three other persons who had purchased cigarettes from his shop. It was the duty of the prosecution to have held the identification parade in

order to establish that the accused are the very same persons who are also seen alongwith the deceased. In any case, merely because the identification parade has not been held, that can not be a good ground for releasing the applicant on bail since the witness may identify the applicant during the trial.

6. Considering the seriousness of the allegation which is made against the applicant and the fact that there is every possibility that the applicant, if released on bail, is likely to tamper with the evidence or threaten the witnesses, in my view, this is not a fit case for grant of bail. The very fact that the prosecutrix has made a statement on oath which is filed in the present application itself is an indication that possibility of threatening the witnesses in the present case cannot be ruled out. The bail application which is filed by the other accused also has been rejected by this Court. There is a growing tendency that the accused threaten the witnesses and ensure that they do not give evidence in Court, more particularly because the police are not in a position to give adequate

protection to the witnesses. Recent survey shows that in the past 30 years, there has been decline in the rate of conviction because the witnesses have turned hostile. This, therefore, is an additional ground why application deserves to be dismissed.

7. The application is rejected. The trial is expedited.

8. The trial Court shall not be influenced by the observations made by this Court while deciding the application and the same shall not be construed as an expression of opinion on merits of the case. The other observation also is regarding the general issue of witnesses turning hostile which is prevalent in the State of Maharashtra.

. Certified copy expedited.

(V.M. Kanade, J.)